

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 1998 Session

**CYNTHIA MILHOUS v. THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

**Appeal from the Chancery Court for Davidson County
No. 97-804-III Ellen Hobbs Lyle, Chancellor**

No. M1997-00226-COA-R3-CV - Filed August 31, 2000

This appeal involves a dispute between a city employee and her employer regarding a sexual harassment claim. The employee originally filed suit in the United States District Court for the Middle District of Tennessee alleging violations of both federal and state law. After the federal court dismissed her state law claims, the employee filed suit against the city in the Chancery Court for Davidson County alleging violations of the Tennessee Human Rights Act. The trial court dismissed the complaint because the applicable one-year statute of limitations had elapsed by the time the employee filed her complaint in state court. The employee argues on this appeal that the savings statute in Tenn. Code Ann. § 28-1-115 (Supp. 1999) tolled the statute of limitations for one year after the federal court dismissed her state law claim. We hold that the doctrine of sovereign immunity precludes the application of this savings statute to an action against a local governmental body and, therefore, affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which HENRY F. TODD, P.J., M.S., and BEN H. CANTRELL, J., joined.

Sandra C. Isom, Memphis, Tennessee, for the appellant, Cynthia Milhous.

James L. Murphy, III and William Michael Safley, Nashville, Tennessee, for the appellee, Metropolitan Government for Nashville and Davidson County.

OPINION

Cynthia Milhous was employed as a warrant officer in the Davidson County Sheriff's Office. In November 1991, several of her fellow warrant officers began to sexually harass her.¹ The harassment took the form of offensive jokes and comments and unwanted physical touching. Ms. Milhous told the officers that she did not like their conduct or remarks. When the conduct

¹We take these facts from the allegations in Ms. Milhous's complaint which, for the purpose of the motion to dismiss, we consider to be true. *Bell v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.*, 986 S.W.2d 550, 554 (Tenn. 1999).

continued, Ms. Milhous complained to her supervisors and to the Metropolitan Government's Employee Assistance Program. On August 19, 1993, the sheriff revoked Ms. Milhous's commission as a deputy sheriff, ordered her to turn in her badge, revolver, and automobile, and placed her on administrative leave with pay.

Ms. Milhous filed a discrimination complaint with the EEOC in September 1993. Later, she filed suit in the United States District Court for the Middle District of Tennessee.² On June 5, 1996, the United States District Court declined to exercise jurisdiction over Ms. Milhous's state law claims, and on March 7, 1997, she sued the Metropolitan Government of Nashville and Davidson County, alleging violations of the Tennessee Human Rights Act. The Metropolitan Government moved to dismiss Ms. Milhous's complaint based on the one-year statute of limitations in Tenn. Code Ann. § 4-21-311(d) (1998). While Ms. Milhous agreed that her complaint in state court was filed more than one year after the alleged discriminatory practices ceased, she asserted her suit was permitted by the savings statute in Tenn. Code Ann. § 28-1-115. On October 10, 1997, the trial court held that the savings statute did not apply to actions against the Metropolitan Government and dismissed Ms. Milhous's action on the ground that it was time-barred. Ms. Milhous has now appealed.

I.

The common-law doctrine of sovereign immunity restricts the ability of persons to sue the State of Tennessee or its political subdivisions. It is embodied in Tenn. Const. art. I, § 17 which provides that "[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct." Thus, waivers of sovereign immunity must be embodied in statutes, and these statutes will be construed narrowly because they are in derogation of the common law. *Jordan v. Baptist Three Rivers Hosp.*, 984 S.W.2d 593, 599 (Tenn. 1999); *Roberts v. Blount Mem'l Hosp.*, 963 S.W.2d 744, 746 (Tenn. Ct. App. 1997).

The Tennessee Governmental Tort Liability Act codifies the doctrine of sovereign immunity with regard to local government entities.³ *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 14 (Tenn. 1997); *Jenkins v. Loudon County*, 736 S.W.2d 603, 608 (Tenn. 1987); *City of Laverne v. Southern Silver, Inc.*, 872 S.W.2d 687, 690 (Tenn. Ct. App. 1993). While it carves out certain exceptions, none of these exceptions are relevant here. See *Lucius v. City of Memphis*, 925 S.W.2d 522, 525 (Tenn. 1996); *Ezell v. Cockrell*, 902 S.W.2d 394, 399-400 (Tenn. 1995).

²The record contains little information regarding the litigation in the United States District Court. The record does not indicate the precise date when Ms. Milhous filed her complaint or when the United States District Court dismissed it. There is apparently no dispute that Ms. Milhous's federal complaint was timely filed.

³Tenn. Code Ann. § 29-20-201(a) (Supp. 1999) provides that "[e]xcept as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary."

The doctrine of sovereign immunity requires that statutes limiting the manner and time for bringing actions against the State or a local government must be strictly enforced.⁴ Accordingly, general savings statutes cannot apply to suits against the State or a local government, unless the statute specifically states that it applies to governmental, as well as private, defendants. *Roettger v. Metropolitan Gov't*, 991 S.W.2d 244, 245 (Tenn. 1999); *Automobile Sales Co. v. Johnson*, 174 Tenn. 38, 49, 122 S.W.2d 453, 458 (1938); *Nance v. City of Knoxville*, 883 S.W.2d 629, 631-32 (Tenn. Ct. App. 1994). This principle applies to claims under the Tennessee Human Rights Act, *Webster v. Tennessee Bd. of Regents*, 902 S.W.2d 412, 414 (Tenn. Ct. App. 1995), as well as to claims for retaliatory discharge and other civil rights violations. *Smith v. Metropolitan Gov't*, No. 01A01-9607-CV-00338, 1997 WL 13749 n.1, at *3 (Tenn. Ct. App. Jan. 16, 1997), *perm. appeal denied*, (Tenn. July 14, 1997).

In *Webster v. Tennessee Bd. of Regents*, this court addressed a set of facts almost identical to the facts of this case. An employee who was fired from his job at Tennessee State University, filed a discrimination action against the university in the United States District Court. After the federal court dismissed the suit, the employee filed suit in state court alleging violations of the Tennessee Human Rights Act. Because the applicable statute of limitations⁵ had run by the time he filed suit in state court, the employee relied on the savings statutes in Tenn. Code Ann. §§ 28-1-105, -115. This court held that sovereign immunity precluded the application of the savings statutes to actions against the state because the savings statutes do not specifically include the State. *Webster v. Tennessee Bd. of Regents*, 902 S.W.2d at 414-15.

The doctrine of sovereign immunity likewise precludes the application of Tenn. Code Ann. § 28-1-115 to Ms. Milhous's claims against the Metropolitan Government because the savings statute does not specifically apply to actions against state or local government. Accordingly, Ms. Milhous's suit is barred by the one-year statute of limitations applicable to the Tennessee Human Rights Act. The trial court, therefore, correctly dismissed her lawsuit.

⁴Conversely, the related doctrine of *nullum tempus occurit regi* ("time does not run against the king") prevents the application of a statute of limitations against a claim by the State or a local government. *Hamilton County Bd. of Educ. v. Asbestospray Corp.*, 909 S.W.2d 783, 785 (Tenn. 1995).

⁵Tenn. Code Ann. § 28-3-104(a) (Supp. 1999), the one-year statute of limitations for tort actions, applied because Tenn. Code Ann. § 4-21-311(d) had not yet been adopted when the plaintiff's cause of action arose. See *Webster v. Tennessee Bd. of Regents*, 902 S.W.2d at 414. As mentioned previously, Tenn. Code Ann. § 4-21-311(d) now explicitly applies a one-year statute of limitations to actions brought pursuant to the Tennessee Human Rights Act. See *Weber v. Moses*, 938 S.W.2d 387, 390 n.3 (Tenn. 1996).

II.

We affirm the judgment and remand the case to the trial court for whatever further proceedings may be required. We also tax the costs of this appeal to Cynthia Milhous for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUDGE